

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYMBIDIUM RESTORATION TRUST,

Plaintiff,

v.

AMERICAN HOMEOWNER
PRESERVATION TRUST SERIES
AHP SERVICING, US BANK TRUST
NA, AHP CAPITAL MANAGEMNET
LLC, AMERICAN HOMEOWNER
PRESERVATION SERIES 2015A+, US
BANK TRUST NATIONAL
ASSOCIATION, AHP SERVICING
LLC, JORGE NEWBERY, AHP
CAPITAL MANAGMENT LLC, AHP S,

Defendants.

CASE NO. 2:24-cv-00025-JNW

ORDER GRANTING STIPULATED
MOTION FOR PROTECTIVE ORDER
AND ENTERING MODEL
STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures

1 or responses to discovery, the protection it affords from public disclosure and use
2 extends only to the limited information or items that are entitled to confidential
3 treatment under the applicable legal principles, and it does not presumptively
4 entitle parties to file confidential information under seal.

5 2. “CONFIDENTIAL” MATERIAL

6 “Confidential” material shall include the following documents and tangible
7 things produced or otherwise exchanged: (i) private financial information, including
8 tax returns, financial statements, and banking records; (ii) trade secret information
9 as defined by the Uniform Trade Secrets Act, RCW 19.108; that could potentially
10 harm the competitive interests; (iii) personal information where disclosure would
11 violate that person’s privacy, RCW 42.56.050; and (iv) information containing loan
12 numbers or any other identifying information that is protected under the Gramm-
13 Leach-Bliley Act.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential
16 material (as defined above), but also (1) any information copied or extracted from
17 confidential material; (2) all copies, excerpts, summaries, or compilations of
18 confidential material; and (3) any testimony, conversations, or presentations by
19 parties or their counsel that might reveal confidential material.

20 However, the protections conferred by this agreement do not cover
21 information that is in the public domain or becomes part of the public domain
22 through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that
3 is disclosed or produced by another party or by a non-party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation.

5 Confidential material may be disclosed only to the categories of persons and under
6 the conditions described in this agreement. Confidential material must be stored
7 and maintained by a receiving party at a location and in a secure manner that
8 ensures that access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the designating party, a
11 receiving party may disclose any confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as
13 employees of counsel to whom it is reasonably necessary to disclose the information
14 for this litigation;

15 (b) the officers, directors, and employees (including in house
16 counsel) of the receiving party to whom disclosure is reasonably necessary for this
17 litigation, unless the parties agree that a particular document or material produced
18 is for Attorney’s Eyes Only and is so designated;

19 (c) experts and consultants to whom disclosure is reasonably
20 necessary for this litigation and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the

1 duplication of confidential material, provided that counsel for the party retaining
2 the copy or imaging service instructs the service not to disclose any confidential
3 material to third parties and to immediately return all originals and copies of any
4 confidential material;

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the “Acknowledgment and
7 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
8 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
9 to depositions that reveal confidential material must be separately bound by the
10 court reporter and may not be disclosed to anyone except as permitted under this
11 agreement;

12 (g) the author or recipient of a document containing the information
13 or a custodian or other person who otherwise possessed or knew the information.

14 4.3 Filing Confidential Material. Before filing confidential material or
15 discussing or referencing such material in court filings, the filing party shall confer
16 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to
17 determine whether the designating party will remove the confidential designation,
18 whether the document can be redacted, or whether a motion to seal or stipulation
19 and proposed order is warranted. During the meet and confer process, the
20 designating party must identify the basis for sealing the specific confidential
21 information at issue, and the filing party shall include this basis in its motion to
22 seal, along with any objection to sealing the information at issue. Local Civil Rule
23 5(g) sets forth the procedures that must be followed and the standards that will be

1 applied when a party seeks permission from the court to file material under seal. A
2 party who seeks to maintain the confidentiality of its information must satisfy the
3 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
4 motion to seal. Failure to satisfy this requirement will result in the motion to seal
5 being denied, in accordance with the strong presumption of public access to the
6 Court's files.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each party or non-party that designates information or items for protection under
10 this agreement must take care to limit any such designation to specific material
11 that qualifies under the appropriate standards. The designating party must
12 designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify, so that other portions of the material,
14 documents, items, or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to
19 impose unnecessary expenses and burdens on other parties) expose the designating
20 party to sanctions.

21 If it comes to a designating party's attention that information or items that it
22 designated for protection do not qualify for protection, the designating party must
23 promptly notify all other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise
3 stipulated or ordered, disclosure or discovery material that qualifies for protection
4 under this agreement must be clearly so designated before or when the material is
5 disclosed or produced.

6 (a) Information in documentary form: (*e.g.*, paper or electronic
7 documents and deposition exhibits, but excluding transcripts of depositions or other
8 pretrial or trial proceedings), the designating party must affix the word
9 “CONFIDENTIAL” to each page that contains confidential material. If only a
10 portion or portions of the material on a page qualifies for protection, the producing
11 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
12 markings in the margins).

13 (b) Testimony given in deposition or in other pretrial proceedings:
14 the parties and any participating non-parties must identify on the record, during
15 the deposition or other pretrial proceeding, all protected testimony, without
16 prejudice to their right to so designate other testimony after reviewing the
17 transcript. Any party or non-party may, within fifteen days after receiving the
18 transcript of the deposition or other pretrial proceeding, designate portions of the
19 transcript, or exhibits thereto, as confidential. If a party or non-party desires to
20 protect confidential information at trial, the issue should be addressed during the
21 pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a
23 prominent place on the exterior of the container or containers in which the

1 information or item is stored the word “CONFIDENTIAL.” If only a portion or
2 portions of the information or item warrant protection, the producing party, to the
3 extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the designating party’s right to secure protection under this agreement for such
7 material. Upon timely correction of a designation, the receiving party must make
8 reasonable efforts to ensure that the material is treated in accordance with the
9 provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a
12 designation of confidentiality at any time. Unless a prompt challenge to a
13 designating party’s confidentiality designation is necessary to avoid foreseeable,
14 substantial unfairness, unnecessary economic burdens, or a significant disruption
15 or delay of the litigation, a party does not waive its right to challenge a
16 confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any
19 dispute regarding confidential designations without court involvement. Any motion
20 regarding confidential designations or for a protective order must include a
21 certification, in the motion or in a declaration or affidavit, that the movant has
22 engaged in a good faith meet and confer conference with other affected parties in an
23 effort to resolve the dispute without court action. The certification must list the

1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain
5 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
6 5(g), if applicable). The burden of persuasion in any such motion shall be on the
7 designating party. Frivolous challenges, and those made for an improper purpose
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
9 expose the challenging party to sanctions. All parties shall continue to maintain the
10 material in question as confidential until the court rules on the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a
17 copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or
19 order to issue in the other litigation that some or all of the material covered by the
20 subpoena or order is subject to this agreement. Such notification shall include a
21 copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be
23 pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under
4 this agreement, the receiving party must immediately (a) notify in writing the
5 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the protected material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this agreement, and
8 (d) request that such person or persons execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a producing party gives notice to receiving parties that certain
13 inadvertently produced material is subject to a claim of privilege or other
14 protection, the obligations of the receiving parties are those set forth in Federal
15 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
16 whatever procedure may be established in an e-discovery order or agreement that
17 provides for production without prior privilege review. The parties agree to the
18 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

19 10. NON TERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals,
21 each receiving party must return all confidential material to the producing party,
22 including all copies, extracts and summaries thereof. Alternatively, the parties may
23 agree upon appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival
2 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product,
4 and consultant and expert work product, even if such materials contain confidential
5 material.

6 The confidentiality obligations imposed by this agreement shall remain in
7 effect until a designating party agrees otherwise in writing or a court orders
8 otherwise.

9 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
10 production of any documents, electronically stored information (ESI) or information,
11 whether inadvertent or otherwise, in this proceeding shall not, for the purposes of
12 this proceeding or any other federal or state proceeding, constitute a waiver by the
13 producing party of any privilege applicable to those documents, including the
14 attorney-client privilege, attorney work-product protection, or any other privilege or
15 protection recognized by law. This Order shall be interpreted to provide the
16 maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R.
17 Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to
18 limit a party's right to conduct a review of documents, ESI or information (including
19 metadata) for relevance, responsiveness and/or segregation of privileged and/or
20 protected information before production.
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1 Information produced in discovery that is protected as privileged or work
2 product shall be immediately returned to the producing party.

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5 Dated this 26th day of July, 2024.

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7 Jamal N. Whitehead
8 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the
Western District of Washington on [date] in the case of *Cymbidium Restoration
Trust v. American Homeowner Preservation Trust Series AHP Servicing, et al.*, No.
2:24-cv-00025-JNW. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Western District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____